SUBJECT INDEX

	PAGE
Question Presented for Review	1
Statement	2
Argument	2
Petitioners' Proposition I: The meaning of the provision "Reserved for Its Use"	4
The Exemption Is Personal to the Government	14
Impact On Tax Structure	16
Petitioners' Proposition II: The Enactment exempting property not immune from State taxation is within the constitutional prerogatives of Congress	18
Petitioners' Proposition III: The exemption of the property from taxation by Federal statute operated to confer a right and privilege upon the petitioners as an incident of their ownership and the State courts were obliged to give effect to that exemption	18
Conclusion	20

AUTHORITIES CITED

CASES:

Assessment of Ernest Price, In re, 88 Okla. 156, 212 Pac. 424	3
Baltimore Shipbuilding and Dry Dock Co. v. City of Baltimore, 195 U.S. 375, 25 Sup. Ct. 50, 49 L. Ed. 242	15, 17
Board of County Commissioners v. Central Baptist Church, 136 Okla. 99, 276 Pac. 726, 63 A.L.R. 1327 (Okla.)	3
Boss v. Polk County, 19 N.W.2d 225 (Ia.)	11, 15

INDEX CONTINUED

	PAGE
Carpenter v. Shaw, 280 U.S. 363, 74 L. Ed. 478	19
Carteret Academy v. State Board of Taxes and Assessments, 133 Atl. 886	12
Chicago Theological Seminary v. Illinois, 188 U.S. 662, 23 Sup. Ct. 386, 47 L. Ed. 641	4, 17
Choate v. Trapp, 224 U.S. 665, 56 L. Ed. 941	19
City of Bristow ex rel. Hedges v. Groom, 194 Okla. 384, 151 P.2d 936	3
Commissioners of Cambria Park v. Board of County Commissioners, 174 P.2d 402 (Wyo.)	3
Connecticut Junior Republic Ass'n v. Town of Litchfield, Conn., 174 Atl. 304 (Conn.)	11
Gerlach Livestock Corporation v. United States, 76 F. Supp. 87, 93	6
Heiner v. The Colonial Trust Company, 275 U.S. 232, 72 L. Ed. 256	16, 20
Ken Realty Company, Inc. v. Johnson, Treasurer, 138 F.2d 809	14
Myers v. Conway, 7 So. 639 (Ala.)	6
New York ex rel v. Cook, 148 U.S. 397, 13 Sup. Ct. 645, 37 L. Ed. 498	20
Nobles Estate, In re, 183 Okla. 48, 80 P.2d 243	3
Norwegian Lutheran Church of America v. Wooster, 30 P.2d 381, 384 (Wash.)	10
People ex rel, Rorke v. Board of Assessors of the City of Brooklyn, 32 Hun. 457	9
Princeton Country Day School v. City Board of Tax Appeals, 175 Atl. 136 (N.J.)	12
Rutgers Chapter Delta Upsilon Fraternity v. City of New Brunswick, 28 A.2d 759 (N.J.)	11-12

INDEX CONTINUED

	PAGE
South Dakota, Sigma Chapter House Ass'n v. Clay County, 276 N.W. 258	10-11
Spohn v. Stark, County Treasurer, 150 N.E. 787 (Ind.)	9
State ex rel Hammer v. MacGurn, 86 S.W. 138 (Mo.)	12-13
State of Alabama v. King and Boozer, 314 U.S. 1, 86 L. Ed. 3, 62 Sup. Ct. 43	15
State v. Board of Foreign Missions of Augustana Synod, 22 N.W.2d 642 (Minn.)	11
United States v. Baumgartner, 259 Fed. 722	8
United States v. Celestine, 215 U.S. 278, 30 Sup. Ct. 93, 54 L. Ed. 195	6
United States v. Stewart, 318 U.S. 60, 61 Sup. Ct. 102, 85 L. Ed. 40	20
Ward v. Board of County Commissioners, 253 U.S. 17, 64 L. Ed. 751, 40 Sup. Ct. 419	19
Wenner, County Treasurer v. Mothersead, State Bank Commissioner, 264 Pac. 816	3
STATUTES:	
Oklahoma Enabling Act, Act of Congress, June 16, 1906, Ch. 3335 (34 Stat. 269) Sec. 3	1
Title 68, O.S. 1951, Sec. 15.2	3-4
MISCELLANEOUS:	
Oklahoma Constitution, Art. 1, Sec. 3	2

In the
Supreme Court of the United States

OCTOBER TERM, 1958

No. 658

MAURICE B. BALDWIN and LARISSA M. BALDWIN,
Petitioners,

VERSUS

THE BOARD OF TAX-ROLL CORRECTIONS OF OKLAHOMA COUNTY and W. T. BILL HALE, County Treasurer of Oklahoma County,
Respondents.

Certiorari to the Supreme Court of Oklahoma

RESPONDENTS' BRIEF IN ANSWER TO PETITIONERS' BRIEF

QUESTION PRESENTED FOR REVIEW

Has the Congress in adopting the Oklahoma Enabling Act, Act of Congress, June 16, 1906, Ch. 3335 (34 Stat. 269) Section 3, granted an exemption from taxation by the State of property belonging to individual white citizens, who had leased said property to the Government for profit? The Government agreed to use said property as a Post Office.

STATEMENT

The United States Government is not a party to this lawsuit and asserts no interest in issues presented. The government, recognizing that this involved property might be subject to taxation, protected its rights by inserting in the lease with petitioners the provision "The lessor shall pay all taxes and water rates, and shall have this lease duly recorded * * *."

The Government leased a part of the building only and not the real estate. The involved tax assessed is an ad valorem tax, on the building and real estate.

The tax is a non-discriminatory tax and there is no contention here that the property was assessed at any higher rate than that assessed against other similar properties in Oklahoma City. The consideration of the lease paid to the land owners is substantial, $18,362.00 per annum. The petitioners own and operate the involved property for profit.

ARGUMENT

Unless otherwise noted, all emphasis appearing in this brief is supplied by respondents.

As stated on page 6 of petitioners' brief, Art. 1, Sec. 3 of the Oklahoma Constitution is a copy verbatim of the Oklahoma Enabling Act, Act of Congress, June 16, 1906, Chap. 3335 (34 Stat. 269) Sec. 3, with the exception of one word.

Preliminary to our answer to petitioners' interpretation of "reserved for its use", we deem it helpful to con-

sider certain well established rules of construction of statutory or constitutional provisions having to do with exemption of property from taxation. These were presented to the Oklahoma Supreme Court in our brief.

A constitutional or statutory exemption from taxation must be clearly conferred, in plain words and should be strictly construed against the one claiming exemption.[1]

Taxation is favored in the law; exemptions are not. And claims for tax exemptions are sustainable only when clearly within provisions of the law under which exemption is claimed.[2]

The courts will not read into a section of the Constitution something which is not there. The courts will not legislate by judicial construction.[3]

It is the general theory of the law that all property shall contribute equally to the support of the Government, and that all property, either real or personal, except such as is declared by law to be exempt, shall be subject to ad valorem taxation.[4]

The intent of the Legislature is expressed in the statute declaring what property shall be exempt, Title 68, O.S.

---

[1] *Commissioners of Gambria Park* v. *Board of County Commissioners*, 174 P.2d 402 (Wyo.); *Board of County Commissioners* v. *Central Baptist Church*, 136 Okla. 99, 276 Pac. 726, 63 A.L.R. 1327 (Okla.); *Wenner, County Treasurer* v. *Mothersead, State Bank Commissioner*, 264 Pac. 816.

[2] *Commissioners of Cambria Park* v. *Board of County Commissioners, supra; In re Nobles Estate*, 183 Okla. 48, 80 P.2d 243.

[3] *City of Bristow ex rel. Hedges* v. *Groom*, 194 Okla. 384, 151 P.2d 936.

[4] *In re Assessment of Ernest Price*, 88 Okla. 156, 212 Pac. 424.

1951, Sec. 15.2. It provides that all property of the United States and of this State, and all property devoted exclusively to educational, fraternal, religious and benevolent purposes shall be exempt and

> "all property used exclusively and directly for charitable purposes within this state, providing the charity using said property *does not pay rent or remuneration to the owner thereof.*" Title 68, O.S. 1951, Sec. 15.2 (9).

If a decision is close or doubtful as to its correctness, such doubt should be cast for the State or the County, and the burden of establishing his right to exemption should be left on the one asserting such exemption.[5]

I.

The meaning of the provision "Reserved for Its Use."

In their petition, at page 11, the petitioners say:

> "If the words, 'reserved for its use', do not denote a Congressional intent to forbid the State to tax property not Federally owned but merely *effectively subjected to Federal governmental use* to the exclusion of the owner, then Petitioners' claim must fail."

"Effectively subjected" in this case means "leased to" the Government for its use. With this more accurate amendment, we can accept the petitioners' statement.

The meaning of "reserved for its use" in Section 3 of the Act of Congress does not avail petitioners the relief sought.

---

5 "Exemption cannot exist by implication only; a doubt is fatal to the claim." *Chicago Theological Seminary* v. *Illinois*, 188 U.S. 662, 23 Sup. Ct. 386, 47 L. Ed. 641.

The principal difficulty confronting the petitioners in this case is that the United States is making no claim of exemption, for its use or otherwise. The United States is asserting no claim at all. The United States is not a party to the action. All of its interests were protected when it provided in the lease that "the lessor shall pay all taxes and water rates, and shall have this lease recorded" (R. 23).

Here the claim of exemption from taxation is not asserted for the benefit of the United States. The claim of exemption is asserted solely to enhance the profits of petitioners in collecting income from their property.

Petitioners must stand or fall on the claim that Section 3 of the Enabling Act and the same section adopted into the Oklahoma Constitution, Art. 1, Sec. 3, grant them an exemption. The relevant part of the section reads as follows:

> "The people inhabiting the State do agree and declare that they forever disclaim all right and title in or to any unappropriated public lands lying within the boundaries thereof, and to all lands lying within said limits owned or held by any Indian, tribe, or nation; and that until the title to any such public land shall have been extinguished by the United States, the same shall be and remain subject to the jurisdiction, disposal, and control of the United States. * * * No taxes shall be imposed by the State on lands or property belonging to or which may hereafter be purchased by the United States or reserved for its use."

It is the last clause of the section, "reserved for its use", upon which plaintiffs rely in their claim of exemption.

You "reserve" from that which you have; you do not "reserve" by acquisition of that which another person has;

you acquire, or obtain, or purchase from such person, you do not "reserve."

"'Reserve' means to keep, to hold, to retain."

—*Myers* v. *Conway*, 7 So. 639 (Ala).

"The condition of the deed reads: 'The grantor reserves the right.' This word means to keep or retain. That is to say, to keep what one already has. You do not reserve a right which you do not possess." *Gerlach Livestock Corporation* v. *United States*, 76 F. Supp. 87 at page 93.

This Honorable Court had occasion to define "reservation" in *United States* v. *Celestine*, 215 U.S. 278; 30 Sup. Ct. 93; 54 L. Ed. 195, wherein it is said:

"The word is used in the land law to describe any body of land, large or small, which Congress has reserved for any purpose. It may be a military reservation, or an Indian reservation, or indeed, one for any purpose, for which Congress has authority to provide."

From the time of the Louisiana Purchase until the Government "extinguished" its title thereto, the title to all land in Oklahoma was vested in the United States. The Government title to various lands was, from time to time, "extinguished" by treaties with Indians and Indian tribes; by land openings and by various conveyances. Title to any unappropriated lands remained in the United States for its use or its trust; for Indian tribes, military reservations, or other governmental uses, and such "reserves" are exempt from taxation under Art. I, Sec. 3 of the Constitution.

Even in the Enabling Act there were "reservations" other than for the Military or for the Indians. Section 7, relating to the granting of Sections 16 and 36 in every township in Oklahoma Territory for school purposes contain reservations for national parks, game preserves, etc., with the reservation of jurisdiction over the same. The only use declared exempt in this section is property "reserved" for the use of the United States and the provision will not be expanded by judicial construction to include property of a citizen thereafter leased to the Government, with title retained by the citizen.

This entire Section 3 of either the Act of Congress or Oklahoma Constitution relates to lands owned by the United States at the time of the adoption of the Constitution, or to such lands as were thereafter purchased by the United States. In the first sentence the people of Oklahoma forever disclaimed all right and title to any unappropriated public lands lying within the boundaries of the State, and to all lands owned or held by Indian tribes, and until the title to any public land is extinguished by the United States, the same remain under the jursidiction, disposal and control of the United States. Then follows the provisions that no taxes shall be imposed by the State on lands or property belonging to, or which may hereafter be purchased by the United States, or "reserved for its use."

Clearly, as to these two latter provisions, exemption can apply only upon condition of ownership by the United States. If the clause "reserved for its use" has a doubtful meaning, such clause must rest upon the theory of owner-

ship with the recited reservation for use. The doctrine of "*nositur a sociis*" means that the meaning of a doubtful word or clause may be ascertained by reference to the meaning of words or clauses associated with it. *United States* v. *Baumgartner*, 259 Fed. 722. All other provisions of Art. I, Sec. 3, and of the Act of Congress, deal with lands owned by the United States or thereafter purchased by the United States. "Unappropriated public lands", lands "owned or held by any Indian tribes or nations", (wards of the Government), public lands until the title hereto had been "extinguished" by the United States, and lands or property "belonging to" or "which may hereafter be purchased" by the United States, all deal with or have reference to lands which were then owned or were thereafter to be purchased by the United States.

It needs no citation of authority to establish that lands subsequently leased to the United States are not lands purchased, and do not become lands "belonging to" or owned by the United States. In this case there has been no attempt to assess for taxation any land or property of the United States.

Again, we say that the only interest that the United States has in the property involved here, is a leasehold, and no attempt is being made to tax such leasehold.

The involved property has two uses, each separate and distinct from the other. The use of the building by the Government is for postal purposes. But the use by the owners is for gain to themselves. They operate the property for their personal profit.

The owner of the land is liable to taxation. If the owner could successfully assert an exception in this case, he would receive the amount of the taxes in addition to the consideration received from the government for the lease. This he cannot do.[6]

The case of *Spohn* v. *Stark, County Treasurer,* 150 N.E. 787 (Ind.) was cited in our brief in the Supreme Court of Oklahoma.

In the *Spohn* case it was held that lessor's property, used for rental purposes is not exempt merely because the lessee devotes the property to a purpose, or use, which would be exempt under the constitutional provision if so used by the owner. To allow an exemption here would be an "exemption for private gain, and a perversion of the enlightened purposes had in view by the powers of the constitution."

The factual setup in the *Spohn* case bears great similarity to the instant case, chief distinction being as to identity of the lessee sovereign, State in one, Federal in the other. Petitioner Baldwin is receiving rent, per annum, of approximately 44 per cent of the assessed valuation. No

---

[6] "The owner of land is liable to taxation. If he leases it for a public school it is not a schoolhouse within the meaning of our school laws. The lessees claim no exemption and they use the building as a school. The lessor is liable as owner. The use of it by his lessee did not create an exemption in his favor. The words 'school-house' in the statute had sole reference to those buildings with the site which the district would have been bound to pay a tax upon as owner but for the exemption. The exemption statute was designed to aid education. Under the construction claimed it would not do so. The board of education hire a building and pay the value of its use and occupation. The owner would get from the treasury by exemption the tax in addition to the value of the use of the premises." *People ex rel. Rorke* v. *Board of Assessors of the City of Brooklyn,* 32 Hun. 457.

attempt is being made to tax the leasehold of the Sovereign. Both statutory and constitutional provisions in the laws of Indiana are similar to Oklahoma. The Indiana Court held that the property was not exempt. The reasoning behind this rule is that the property is not used for tax exempt purposes, by the owner but for gain and profit if rent is paid for its use.

In *Norwegian Lutheran Church of America* v. *Wooster*, 30 P.2d. 381 at 384 (Wash.), it was said that the *owners use* was a commercial one.[7]

And in *South Dakota, Sigma Chapter House Ass'n* v. *Clay County*, 276 N.W. 258, held that if exemption be granted the owner rather than the benevolence, the purpose of the law would be defeated.[8]

---

7 "Appellants next ask, Does the fact that property belonging to a church is leased to another organization engaged in a religious work and the rental received used to carry on the religious work of the lessor operate to exempt from taxation the property so leased? We think not. When the owner leases property he parts with the possession and the use for a consideration. He owns and holds the property for the purpose of receiving an income therefrom, and his use is therefore purely a commercial one. We see nothing in the statute to the effect that one renting property to another for a consideration may have that property exempted from taxation because of the use to which the lessee puts the property. The property leased is not and cannot be used 'for the religious purpose of such association', which is the lessor."

8 "This brings us to a determination of the effect of the use of the property by an assumed benevolence, the chapter, prior to July, 1929, during which period the right to exemption could arise from the exclusive use of the property for charitable or benevolent purposes. Section 6670, Revised Code of 1919, *supra*. Analysis has convinced us that when this problem is approached from the aspect of 'use of the property', ownership of the property continues as a factor to be considered. An exemption of this type is granted as a concession by government in return for unselfish ministrations to human welfare.

Tax exemptions are founded on public policy. Thus exemptions are not based on the favoring of particular persons or corporations at the expense of the taxpayers generally, or granted on any idea of lessening the burdens of individual property owners. *State* v. *Board of Foreign Missions of Augustana Synod*, 22 N.W.2d 642 (Minn.); *Boss* v. *Polk County*, 19 N.W.2d 225 (Ia.).

It has been stated that exemptions are favored on the theory that the concession is due to *quid pro quo* for the performance of service essential to the public by which the State is relieved *pro tanto* from performing. *Connecticut Junior Republic Ass'n* v. *Town of Lichfield, Conn.*, 174 Atl. 304 (Conn.).

Thus, where the exemption from taxation serves the public, and not a private interest, it cannot be regarded as a gift or donation of public credit, or in aid of the individual in whose favor the exemption is declared. *But without that concurring prerequisite, an exemption becomes essentially a gift of public funds*, and indefensible both under public policy and under the constitutional safeguard against illegal taxation. *Rutgers Chapter Delta Upsilon Fra-*

---

8 (Continued)
That this concession is intended by the Legislature as a *quid pro quo* is asserted by authority. *Carteret Academy* v. *State Board of Taxes and Assessment*, 102 N.J.L. 525, 133 A. 886, 887; 61 D.J. 382. If the advantage of the concession so made be permitted to accrue to ownership rather than to the benevolence the law seeks to foster or promote, obviously the purpose of the law will be defeated. Therefore, the landlord may not claim exemption of property leased to an institution of one of the enumerated classes for a rent equivalent. As to such an ownership, the property is used exclusively for rental purposes, and not for charitable or benevolent or educational, etc., purposes." *Sigma Chapter House* v. *Clay*, *supra*.

ternity v. *City of New Brunswick*, 28 A.2d 759 (N.J.); *Princeton Country Day School* v. *City Board of Tax Appeals*, 175 Atl. 136 (N.J.); *Carteret Academy* v. *State Board of Taxes and Assessments*, 133 Atl. 886.

In the case of *State ex rel Hammer* v. *MacGurn*, 86 S.W. 138 (Mo.), it is said:

> "So, if the private owner of the land allows his land to be used for such purposes, and charges no rent, and derives no personal benefit from the land, the land is exempt from taxation, because the land is then devoted exclusively to such a use. This was the case in *City of Louisville* v. *Werne* (Ky.), 80 S.W. 224, relied on by the defendants. For in such cases the owner, contributes the use of his land to public or *quasi* public use, or to such a use as the Constitution contemplates, and derives no gain or profit for himself, and therefore the state does not exact a tax from his land with one hand while accepting a contribution of the use of his land with the other hand. But, on the contrary, when the owner leases his land to the public for a public use, or to a *quasi* public body for a charitable or religious use; and applies the rents derived from the land to his own personal advantage, he contributes nothing to the public or to charity, he loses nothing by the use, he is not a benefactor to any one, but he stands before the law in exactly the same light as any one else who leases his land for any other purpose, and uses the rents for his own advantage, and therefore he is not entitled to any special consideration at the hands of the law or the government, and his property is not exempt. There would be just exactly as much, and no more or less, reason for holding that the property of one who sold provisions or supplies to a charitable institution, which were used to support the lives of the inmates thereof, was exempt from tax-

ation. In both cases he would get and appropriate to his own use the proceeds or products of his property, just the same as if it had been rented, or sold to a private citizen, or to a business concern; and in neither instance would the state or the charitable institution be benefited one jot or tittle by the transaction, for it would pay a full consideration for all it got."

It is conceivable that the clause "reserved for its use", could refer to numerous situations. We concede that under both Art. 1, Sec. 3, Oklahoma Constitution and Sec. 3 of the Enabling Act, there are specific provisions prohibiting the State from taxing lands or property *belonging to* or which may hereafter be purchased by the United States. The Government is constantly purchasing lands and it is also selling lands and renting lands, and is "extinguishing" its title to both unappropriated public lands and lands which it has purchased and it will continue to do so in the future. And in such sales or disposals of its property the Government often will desire to reserve some part or parcel of its lands "for its use", and such "uses" and such "reservations", will depend on conditions confronting it in each individual case.

We believe that this term "reserved for its use", was employed for the protection of the Government in all its future conveyances of public property, following the enactments, if the Government desires to reserve for any use.

The taxation authorities of Oklahoma County do not seek to tax the property of the United States and will not seek to tax property hereafter acquired by the Government in Oklahoma. They do not seek to tax a property

here that has been "reserved" by the Government, for the use of or by the Government.

The Exemption Is Personal to the Government

The petitioners in the instant case seek to invoke an exemption allowed to the Government on its lands or property, for their own personal profit. But any exemption granted to the Government is *personal to the Government* and it is not transferable to or to be used for special protection or profit or gain of a citizen.

In *Ken Realty Company, Inc.* v. *Johnson, Treasurer*, 138 F.2d 809, the United States Government sold an abandoned Post Office building and grounds to plaintiff, the consideration being payable in ten equal installments. The purchaser took possession and the agreement provided that purchaser might sell parts of the property and leases might be made without government approval. The Government retained title to the property and a deed was to be given when the purchase price was paid. Plaintiff claimed the property was exempt and brought an injunction to prevent the assessment. The complaint was dismissed, and plaintiff appealed.

> Held: "Mutual immunity from taxation accorded to State and Federal Governments under Federal Constitution must be given a practical application so as to attain its purpose, but without unnecessary interference with the right of taxation, and *it is personal to the Government and is not transferable to, or to be used for special protection of a citizen.*"

Taxation of the property of plaintiffs in error in no way affects the governmental functions of the United States, and the imposition of an ad valorem tax thereon does not in any way contravene the Federal Constitution. *Boss* v. *Polk County*, 19 N.W. 2d, 225.

The facts in the *Boss* case are very similar to the instant case, the principal distinction being that the property was taken by condemnation limited to duration of war in the *Boss* case, instead of by lease as in the instant case. It was contended that the property was exempt by reason of the "use" by the Government. Held that it was not a tax upon any part of the operation of the Government.

The Court quotes at length from the opinion of the learned JUSTICE HOLMES in *Baltimore Shipbuilding and Dry Dock Co.* v. *City of Baltimore*, 195 U.S. 375, 25 Sup. Ct. 50, 49 L. Ed. 242.[9]

The petitioner urges that if the tax be upheld the United States will be the ultimate taxpayer since the owner will endeavor to fix the rental in an amount sufficient to pay the taxes in addition to a fair consideration for the lease. This contention is answered in *State of Alabama* v. *King and Boozer*, 314 U.S. 1, 86 L. Ed. 3, 62 Sup. Ct. 43, where this Court held that the Constitution, unaided by Congressional Legislation does not prohibit non-discriminatory state taxation merely because the burden is passed on economically as a part of the cost.

---

[9] "It would be a very harsh doctrine that would deny the right of the States to tax lands because of a mere possibility that they might lapse to the United States. The contrary is the law. The conditions cannot be extinguished by the State, but the fee is in the Dock Company, and that can be taxed and, if necessary, sold, subject to the condition" (Citing other United States Supreme Court cases).

To the same effect is *Heiner* v. *The Colonial Trust Company*, 275 U.S. 232, 72 L. Ed. 256, where the Court said that tax exemptions are never lightly to be inferred and any implication of an exemption of the income of Indians, if made, must rest on too narrow a basis to justify the inclusion of income to other persons, merely because the Statute if applied, as written, may have some perceptible economic effect on the Indians.

Impact On Tax Structure

At page 2 of the petition for the writ, petitioners say:

> "The particular Federal statute involved relates solely to taxation by the State of Oklahoma; but identical provisions are contained in the Federal enabling statutes applying to the States of North Dakota, South Dakota, Montana, Washington, Idaho, Wyoming, Utah, New Mexico, and Arizona, whereby the issues here presented are of widespread effect."

We agree that if the issues here presented were decided against the State it would have a widespread effect.

The Government has leased and is continuing to lease vast amounts of property over this nation. The petitioners here contend that even although such leases contain a provision whereby the lessors agree to pay the tax that, nevertheless, the exemption controls. In a great majority of the towns and cities in the State of Oklahoma, the Federal Government rents the building for its use as Post Office. The Government does not see fit to purchase the properties. We cannot estimate the number or value of properties leased for post office purposes in the State

of Oklahoma. If we add to Oklahoma the states of North Dakota, South Dakota, Montana, Washington, Idaho, Wyoming, Utah, New Mexico and Arizona, there will be a vast amount of property privately owned and operated for profit that will be withdrawn from the taxation structure of all said states.

Many additional properties are leased by the Government from private owners for federal governmental use in addition to the Post Offices. If petitioners' contention here can be sustained, the damage to the tax structure of the several states mentioned would be appalling. And all this would be accomplished by virtue of an implied exemption where the general rule employed in the construction of statutory or constitutional provisions is that the exemption from taxation must be clearly conferred, in plain words, and should be strictly construed against the one claiming the exemption. All this would be accomplished in face of this Court's declaration in *Chicago Theological Seminary* v. *State of Illinois*, 188 U.S. 662, 23 Sup. Ct. 386, 47 L. Ed. 641. "Exemption cannot exist by implication only; a doubt is fatal to the claim."

It was JUSTICE HOLMES in *Baltimore Shipbuilding and Dry Dock Company* v. *City of Baltimore*, 195 U.S. 375, 49 L. Ed. 242, who said:

> "* * * But, furthermore, it seems to us extravagant, to say that an independent, private corporation for gain, created by a state, is exempt from state taxation, either in its corporate person or its property, because it is employed by the United States, even if the work for which it is employed is important and takes much of its time."

II.

Petitioners' second proposition reads as follows:

The Enactment exempting property not immune from State taxation is within the constitutional prerogatives of Congress.

We have no quarrel with petitioners' proposition as above stated. The discussion is academic and interesting, but avails the petitioners nothing in this case since Congress has not seen fit to pass an act giving to a private land owner an exemption on his property, which he uses for his profit in leasing the same to the Government. The proposition is predicated on an assumption that the involved property is exempt.

III.

Petitioners third proposition reads:

The exemption of the property from taxation by Federal statute operated to confer a right and privilege upon the petitioners as an incident of their ownership and the State courts were obliged to give effect to that exemption.

We join issue with petitioners' third proposition for the reason that it is respondents' contention that there is no Federal or State statute exempting Baldwin's interest in their property.

The third proposition is without merit. Therein, petitioners assert that the owner of lands is entitled to receive the benefit of an exemption of his property, as "an incident of his ownership of property."

That, however, was not even presented to the Supreme Court of Oklahoma and that court made no decision thereon.

It presents no Federal question. Baldwin cites three cases by this Court, but none of the cases are applicable in consideration of the case at bar.

Choate v. *Trapp*, 224 U.S. 665, 56 L. Ed. 941, involved Indian lands conveyed under the Atoka Treaty and ratified by Acts of Congress. The land of the Indians was to be non-taxable for 25 years. *It was stated in the opinion that there is a broad distinction between tribal property and private property.* From the time that the United States "extinguished" its title to the land in question, to the time that Baldwin (a white man) acquired title and on to the time of the lease to the Government, this land was subject to taxation, and Baldwin had no exemption by treaty or statute.

Ward v. *Board of County Commissioners*, 253 U.S. 17, 64 L. Ed. 751, 40 Sup. Ct. 419; and *Carpenter* v. *Shaw*, 280 U.S. 363, 74 L. Ed. 478, were other cases involving Indian claimants who had received allotments under a Treaty and Acts of Congress. They were wards of the Government and exemption of their lands was upheld.

All three of the cited cases deal with the Indians who received allotments under Indian Treaties and Acts of Congress and their exemptions were upheld by the Supreme Court of Oklahoma.

Petitioners are white people who entered into a commercial lease of their property to the Government for a profit.

Petitioners are attempting to obtain an exemption by implication. The general rule is that exemptions from tax-

ation cannot rest upon implication.[10] And it cannot be lightly inferred from the doubtful import of language of a statute[11] but it must plainly appear either from the express words or necessary intendment of a statute [12] and not left to implication or inference.

We submit that for all of the foregoing reasons, the petition for a writ of certiorari should be denied or, in the alternative, that the decision of the Supreme Court of Oklahoma herein be affirmed.

Respectfully submitted,

JAMES W. BILL BERRY,
County Attorney of
Oklahoma County, Oklahoma;

M. M. THOMAS,
Assistant County Attorney,

Attorneys for Respondents.

Of Counsel:
JOE MATTOX,
Assistant County Attorney,
County Court House,
Oklahoma City, Oklahoma.

February, 1959.

---

[10] *United States* v. *Stewart*, 318 U.S. 60, 61 Sup. Ct. 102, 85 L. Ed. 40.

[11] *Heiner* v. *Colonial Trust Company*, 275 U.S. 232, 48 Sup. Ct. 64, 72 L. Ed. 256.

[12] *New York ex rel.* v. *Cook*, 148 U.S. 397, 13 Sup. Ct. 645, 37 L. Ed. 498.